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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,028	02/14/2002	Bernadette Mary Gibbs	53394.00566	5655
56679	7590	01/08/2007	EXAMINER	
GOSZ AND PARTNERS, LLP 450 BEDFORD STREET LEXINGTON, MA 02420			KIDWELL, MICHELE M	
		ART UNIT		PAPER NUMBER
				3761
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/08/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

F8

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/074,028	GIBBS, BERNADETTE MARY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 December 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,5-7,11-16,26-28,30 and 31 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,5-7,11-16,26-28,30 and 31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 14, 2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 2, 5 – 7, 11 – 16, 26 – 28 and 30 – 31 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Olson (US 6,764,475).

With respect to claim 1, Olson discloses an absorbent article comprising a main body having a first main body waist portion, a second main body waist portion and a

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central main body portion disposed between the first and second main body waist portions, the main body having orthogonal longitudinal and lateral axes (figure 2); and a pair of elastic side panels (34, 85) each side panel extending the length of the first main body waist portion and the second main body waist portion and connecting the first main body waist portion to the second main body waist portion, the main body and the side panels collectively defining a waist opening edge surrounding a waist opening and two leg opening edges, each leg opening edge surrounding a leg opening, each elastic side panel having a first side portion extending laterally outward from the first main body waist portion and terminating in a first outer lateral side panel edge, and a second side portion extending laterally outward from the second main body waist portion and terminating in a second outer lateral side panel edge, the first side portion being attached to the second side portion by a curved side seam, as set forth in col. 17, lines 10 – 13 and in col. 19, lines 66 – 67.

The difference between Olson and claim 1 is the provision that the curved side seam has a centerline that intersects the waist opening edge at a first intersection point, a tangent to the centerline defining a first seam angle in the range of from about 0 to about 80 degrees with respect to the vertical axis.

The examiner initially notes that any point of the side seam may be measured to meet the claimed limitation, including the very top point of the side seam where the seam does not appear to be curved, and one could reasonably assume to be 0 degrees or at least less than 80 degrees. Nevertheless, for the sake of completeness, the examiner contends that it would have been obvious to one of ordinary skill in the art to

modify angle of the first seam in order to produce the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

As to claim 2, Olson discloses an absorbent article further comprising a backsheet (40) wherein the main body includes a first portion of the backsheet, a topsheet attached to the first portion of the backsheet and an absorbent core disposed intermediate the topsheet and the first portion of the backsheet, the elastic side panels being formed at least in part from a second portion of the backsheet as set forth in col. 12, lines 14 – 30.

With reference to claim 5, Olson discloses an absorbent article wherein at least a portion of the side seam is formed as a circular arc as set forth in figures 1 – 2 and 4.

As to claim 6, Olson discloses an absorbent article wherein at least a portion of the side seam comprises a plurality of curved sub-portions as set forth in figure 1.

With respect to claim 7, Olson discloses an absorbent article wherein at least two of the plurality of curved sub-portions are formed with different geometric curve types as set forth in figures 1, 4 and 7 – 9.

The difference between Olson and claim 11 is the provision that the first seam angle is in a specific range.

The examiner contends that depending upon which tangent is selected, the first seam angle may correspond to the claimed range.

Alternatively, it would have been obvious to one of ordinary skill in the art to modify first and/or second seam angles in order to produce the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

With respect to claims 12, 14 – 16 and 30 – 31, see the rejection of claim 10.

As to claim 13, Olson discloses an absorbent article wherein the side seam has a centerline that intersects one of leg opening edges at a second intersection point, the centerline defining a second seam angle with respect to the vertical axis as set forth in figure 1.

With reference to claim 26, Olson discloses an absorbent article wherein the first side portion includes a lower hip region having a lateral hip region edge, the lateral hip region edge intersecting the first outer lateral side panel edge as set forth in figure 1.

Regarding claim 27, Olson discloses an absorbent article wherein at least a portion of the first outer lateral side panel edge and at least a portion of the lateral hip region edge form a substantially continuous curve as set forth in figure 1.

As to claim 28, Olson discloses an absorbent article comprising a main body having a first main body waist portion, a second main body waist portion and a central main body portion disposed between the first and second main body waist portions, the main body having orthogonal longitudinal and lateral axes (figure 2); and a pair of side

panels (34,85) each side panel extending the length of the first main body waist portion and the second main body waist portion, and connecting the first main body waist portion to the second main body waist portion, the main body and the side panels collectively defining a waist opening edge surrounding a waist opening and two leg opening edges, each leg opening edge surrounding a leg opening, each side panel being formed from a first side portion extending laterally outward from the first main body waist portion and a second side portion extending laterally outward from the second main body waist portion and a pair of curved side seams (col. 17, lines 10 – 13 and col. 19, lines 66 – 67), each side seam connecting the first side portion of one of the side panels to the second side portion of the same side panel, each seam intersecting the waist opening edge at a first seam angle relative to the vertical axis and intersecting one of the leg opening edges at a second seam angle relative to the vertical axis as set forth in figure 1.

The difference between Olson and claim 28 is the provision that the curved side seam has a centerline that intersects the waist opening edge at a first intersection point, a tangent to the centerline defining a first seam angle in the range of from about 0 to about 80 degrees with respect to the vertical axis.

The examiner initially notes that any point of the side seam may be measured to meet the claimed limitation, including the very top point of the side seam where the seam does not appear to be curved, and one could reasonably assume to be 0 degrees or at least less than 80 degrees. Nevertheless, for the sake of completeness, the examiner contends that it would have been obvious to one of ordinary skill in the art to

modify angle of the first seam in order to produce the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

***Response to Arguments***

Applicant's arguments filed December 14, 2006 have been fully considered but they are not persuasive.

Initially, the examiner notes that the application number provided at the top of the Remarks section is not the application number of the instant application.

Secondly, the examiner notes that the replay does not include the substance of the interview as required by MPEP 713.04.

With respect to the applicant's argument that Olson does not provide side panels that extend from the first main body portion, the examiner disagrees and refers to the rejection of claims 1 and 28. Element 85 completes the pair of the pair of side panels, and as shown in figure 2, element 85 extends from the first main body portion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michele Kidwell  
Primary Examiner  
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